

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA, .
vs. . DOCKET NO. 5:19-CR-807-XR
MARCELINO MEDINA RODRIGUEZ, .
DEFENDANT. .

TRANSCRIPT OF SENTENCING AND REVOKE SUPERVISED RELEASE
PROCEEDINGS
BEFORE THE HONORABLE XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE
SEPTEMBER 21, 2021

APPEARANCES:
FOR THE PLAINTIFF: DAPHNE DANIELLE NEWAZ, ESQUIRE
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OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
SAN ANTONIO, TEXAS

1 (San Antonio, Texas; September 21, 2021, at 1:30 p.m., in
2 open court.)

3 THE COURT: 19CR807, along with 13CR336, U.S. versus
4 Marcelino Medina Rodriguez.

5 Appearances, please.

6 MS. NEWAZ: Good afternoon, Your Honor. Daphne Newaz
7 for the United States.

8 THE COURT: Thank you.

9 MS. DOUENAT: Good afternoon, Your Honor, Marina
10 Douenat on behalf of Mr. Medina Rodriguez.

11 THE COURT: Thank you.

12 Are there any objections on the presentence report
13 from the government?

14 MS. NEWAZ: No, Your Honor.

15 THE COURT: Any from the defendant?

16 MS. DOUENAT: No, Your Honor.

17 THE COURT: So in the underlying case, 19CR807, the
18 Criminal History Category is V, the total offense level is 19.

19 In the motion to revoke supervised release, which is
20 based upon the offense in 19-807, the most serious grade
21 violation is B. The Criminal History is Category VI.

22 In 13CR336 the guidelines suggest but do not require
23 imprisonment between 21 to 27 months with a maximum term of
24 imprisonment being two years, and a maximum term of supervised
25 being three years less any term of imprisonment.

1 In 19CR807, at Criminal History Category V, and sua
2 sponte I suggest the criminal history category is overstated
3 although technically scored correctly, the guideline range is
4 57 to 71 months in its advisory and nonobligatory fashion, and
5 supervised release is one to three years.

6 And so with that, I'll turn to allocution in both
7 matters, Counsel.

8 MS. DOUENAT: Yes, Your Honor.

9 Mr. Medina Rodriguez -- I know there's a letter that
10 was tendered to the Court written by his mother -- he was
11 raised in a small ranch in Mexico City. His mom is 72 years
12 old and he is the only son of two children that she's had and
13 the only financial caretaker for her.

14 He did return, and for the sole reason he returned
15 was to take care of his mother because she required
16 medication, which is insulin shots, which are costing her an
17 arm and a leg in this little ranch. And so he came back for
18 that reason, Your Honor.

19 He understands -- I mean, in the last two years that
20 he's been incarcerated, it's been extremely difficult. He was
21 concerned about losing his mother. She ended up getting COVID
22 but did not pass; thank goodness. That was one of the biggest
23 scares for him.

24 He, himself, ended up getting COVID last year and
25 that was really hard on him and he really suffered from it.

1 He is vaccinated. And these are -- I mean, he's vaccinated
2 for many reasons. He wanted to be vaccinated. He wants to
3 not be able to, you know, give anything back to his mother
4 when he goes back to Mexico.

5 He wants the Court to understand that also, even
6 though he is not close to his father, and his father was
7 absent in his life, he found out from a stepbrother that his
8 father had passed away recently, about three months ago. That
9 made him really sad. These are all things that happened to
10 him while incarcerated and in custody.

11 It's been a very difficult 24 months for him. He
12 wants the Court to consider those things as factors and giving
13 him a variance.

14 We're requesting the Court to know that at the age of
15 45 he understands he can't be here, and especially because
16 he's seen the revocation and how much time he's been in
17 custody and what that would do and what that would mean is not
18 being able to be there for his mother in her final days and he
19 won't do that to his mother, and he wants the Court to
20 consider that in giving him a variance and letting him go home
21 sooner rather than later.

22 THE COURT: Thank you.

23 Mr. Medina Rodriguez, would you like to say anything?

24 THE INTERPRETER: Well, yes. Before anything, I'd
25 like to apologize, Your Honor.

1 And that, first of all, my main concern is — well,
2 I'm not asking to be set free, but just to consider my most
3 concern is going to see my mother because she's all I have
4 left.

5 When I went back to Mexico and I found my mom, she
6 was very ill and she asked me to help her, to support her.
7 She didn't tell me to come back, but over there where I'm from
8 it's very hard to find work.

9 And I tried to stay over there but it's very
10 difficult under the border because there's a lot of — what do
11 you call it? A lot of criminal activity. And it's very hard
12 because even to work, you know, they charge you for
13 everything.

14 And my mom, well, she's struggling. You know, she
15 owes money already. The insulin that she's getting, it's
16 anywhere from 3,500 to 4,500 and she owes money. She's taking
17 out loans, but — And well, I'm just worried about my mother.
18 I'd like to be able to help her, and well, I came over here.

19 You know, now that my father passed away, I tried
20 to — I was hoping to see him but he's gone now.

21 And right now I'm not feeling real well either,
22 health-wise, because I did have what happened to me with the
23 Coronavirus. And I'm taking medication for some chest pain
24 that I've been having.

25 And right now what concerns me the most is, well, my

1 mom, and so I'm hoping I'll get a fair sentence, something
2 that's not too high.

3 And I apologize for coming to the United States
4 knowing I wasn't supposed to come. The reason I came back was
5 to help my mother, knowing that I couldn't come back. I know
6 very well that I can't come into the United States, but I had
7 to do it because my mother took a decision that -- with her
8 medications, and I had to help her.

9 I don't have a way of proving. And I'm telling the
10 truth. I don't have any proof. And I don't mind if you-all
11 would call to show that, you know, because I'm in court and I
12 told them that I was going to be in court.

13 So I don't know if they are there right now.

14 MS. DOUENAT: He's just referring, Your Honor, to
15 there's a little convenience store that has a public phone
16 that that's how I've been able to communicate with his mother
17 by talking there and setting up a time in the future. I know
18 the Court has a letter where she explains that.

19 THE COURT: Yeah. No, I understand what he's trying
20 to tell me. He's trying to tell me if I want to verify his
21 story about he came across for his mother, we could attempt to
22 call his mother at this convenience store. Yeah, I got that.

23 MS. DOUENAT: Thank you, Your Honor.

24 THE COURT: Thank you, sir.

25 Anything from the government?

1 MS. NEWAZ: Your Honor, with regard to this
2 particular defendant, the government would request at a
3 minimum that you sentence him to a guideline sentence of at
4 least 57 months in the 807 case, and then a guideline sentence
5 of 21 months on the 336 case to run consecutively.

6 The total time, if Your Honor did do that, would be
7 78 months, and the thought being that would be one more month
8 than you gave him in 2013 when you sentenced him to 77 months
9 in custody.

10 Obviously, the defendant has received some of the
11 benefits of the restructuring of the guidelines with this
12 offense, and so his guidelines come out much less than they
13 did in 2013.

14 The reason that the government wouldn't argue to you
15 for any further reductions is because of his significant
16 criminal history, he's got misdemeanor convictions for DWI,
17 assault, and resisting. And then also his felony convictions
18 for the possession of a controlled substance, the attempted
19 taking of a weapon from a police officer.

20 I also note that he's got eight voluntary returns and
21 three deports. And so he tends to come back almost as soon as
22 he gets deported, historically.

23 And so considering his overall situation, not just
24 this -- these particular reasons on why he came this time, but
25 his history, the government would request that, Your Honor.

1 MS. DOUENAT: May I briefly respond, Your Honor? I
2 won't take long. I promise.

3 THE COURT: Go ahead.

4 MS. DOUENAT: His prior criminal history, Your Honor,
5 was all based on alcohol usage and consumption, and before the
6 age of 30, Your Honor. After that, Your Honor, he stopped
7 drinking alcohol.

8 Since his last deport he has not been drinking
9 alcohol. And it's been 15 years since there's been any kind
10 of that kind of behavior, Your Honor, just to show the arc of
11 his life, Your Honor.

12 THE COURT: So under 3553(a) -- well, my first job is
13 I need to make sure the guidelines are correctly calculated.

14 They are technically correctly calculated, but I'm
15 dealing with a -- regardless of how you score the guidelines
16 now, based upon this criminal history, it just doesn't equate
17 to what we normally see as a V, and so I'm going to sentence
18 him as if he was at a Category IV.

19 He gets a lot of points on the total offense level
20 for the priors, and so that's already calculated in there.

21 At IV and 19, the advisory guideline range is 46 to
22 57 months.

23 The sentence in 19CR807, all factors considered --
24 I've considered the 3553(a) factors, I've considered the prior
25 criminal history, I've considered the history is slightly

1 overstated, all factors considered, the sentence is 46 months
2 on that case.

3 Thereafter, you are placed on supervised release of
4 three years. While on supervised release, you will comply
5 with the mandatory and standard conditions adopted by the
6 Court in November 2016.

7 The Court finds that you do not have the ability to
8 pay a fine, therefore a fine will not be imposed. The special
9 assessment of \$100 is remitted.

10 With regard to 13-336, the revocation, the
11 government's motion to revoke is granted. The sentence there
12 is two months to run consecutive. The total sentence is 48
13 months. There will be no further supervised release in
14 13-336.

15 You have the right to appeal the sentence in both
16 matters, unless as part of a plea agreement you have waived
17 that right.

18 Anything further from the government?

19 MS. NEWAZ: No, Your Honor.

20 THE COURT: Anything else?

21 MS. DOUENAT: No, Your Honor.

22 THE COURT: Good luck, sir.

23 Needless to say, he gets credit for time-served
24 since --

25 MS. DOUENAT: 2019, Your Honor.

1 THE COURT: October 9, 2019.

2 (Concludes proceedings.)

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4 I certify that the foregoing is a correct transcript from
5 the record of proceedings in the above-entitled matter. I
6 further certify that the transcript fees and format comply
7 with those prescribed by the Court and the Judicial Conference
8 of the United States.

9
10 Date: 12/10/2021

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